IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

CRL.A.No. 327 of 1999()

CC.847/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG

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APPELLANT:

P.MUHAMMAD, AGED 42 YEARS,
S/O.MUHAMMADKUNHI, PERINHERI HOUSE,
RESIDING AT VADEKKE TRIKARIPUR,
P.O. TRIKARIPUR,
HOSDURG TALUK.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. K.M.MOIDU,
AGED ABOUT 45 YEARS,
S/O.IBRAHIM, RESIDING ONMOOLA
THERUVATH, NEAR RAILWAY STATION,
P.O., KASARAGOD.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH
SRI.M.RAMESH CHANDER

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.327 of 1999(B)

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Dated this the 6th day of August, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.824/1996 in the file of the Judicial Magistrate of the First Class-I, Hosdurg, with respect to the offence under Section 138 of the Negotiable Instruments Act, which stands dismissed and the accused acquitted.

2. The prosecution case is that the accused borrowed a sum of Rs.25,000/- and issued Ext.P1, the impuged cheque, which when presented got dishonoured for want of funds in the account of the accused. Evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P6. Ext.P6 is the reply notice wherein the contention of the accused is that the cheque was not intended to be presented at the time when the complainant presented the same but after the handing over of the documents with respect to the vehicle transaction involved.

3. The trial court has acquitted the accused on the ground that Ext.P1 was found to be not drawn on a banker on the basis of the evidence of PW.2, the Manager of the particular concern, on which Ext.P1 was drawn.

It is seen that the depositions have been destroyed by the court below. Copies are not available with the parties. In the circumstances, the order of the court below is set aside and the matter is remitted back to the court below for fresh disposal after permitting the parties to adduce fresh evidence, if any. The parties shall appear before the court below on 24/08/2007.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.327 of 1999(B)

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J U D G M E N T

6th August, 2007